

**Recommended Conditions of Approval - Special Development Permit**

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

**1. GENERAL CONDITIONS**

- A. Project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development, major changes may be approved at a public hearing.
- B. The Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
- C. The Special Development Permit is subject to the applicable Sunnyvale Municipal Code requirements (§19.70.050) and Subdivision Map Act requirements (§66427.1). The applicant shall provide written evidence that these requirements have been met.
- D. To address storm water runoff pollution prevention requirements, an Impervious Surface Calculation worksheet is required to be completed and submitted for the California Regional Water Quality Control Board prior to issuance of a Building Permit.
- E. A Noise Study shall be submit, which analyzes the exterior, existing noise level, to ensure compliance with maximum 45dba interior noise levels, per Sunnyvale Municipal Code requirements.
- F. A Final Tenant Relocation Plan is required prior to issuance of the Tentative Map.

**2. BMR (BELOW MARKET RATE UNITS)**

- A. Comply with Below Market Rate Housing (BMR) requirements as noted in SMC 19.66.
- B. The project will provide 8 Below Market Rate ownership dwelling units in compliance with SMC 19.66.
- C. The developer shall submit a site plan to the Housing Officer for review. The plan will include a description of the number, type, size and location of each unit on the site. The Housing Officer will then determine the specific units to be obligated as Below Market Rate (BMR) unit(s). (BMR Administrative Guidelines)
- D. Prior to issuance of a building permit, the developer shall execute a Development Agreement with the City to establish the units. The rental/sale price of the BMR unit(s) is established at the time of the

execution of the Development Agreement. (BMR Administrative Guidelines)

- E. All BMR dwelling units shall be constructed concurrently with non-BMR units, and shall be dispersed throughout the property and shall reflect the range in numbers of bedrooms provided in the total project and shall not be distinguished by exterior design, construction or materials. (SMC 19.66.020(c))
- F. Sixty days (60) days prior to the estimated occupancy date, the developer shall notify the Housing Division of the BMR units to be available. (BMR Administrative Guidelines)
- G. BMR Ownership Program - Developer and Buyer to execute "Addendum to Purchase Offer" prior to Occupancy Permit and provide copy to City. (BMR Administrative Guidelines)
- H. Ownership Units - Prior to Close of Escrow, a Deed of Trust between the City and the Buyer of the BMR unit shall be recorded to establish resale and occupancy restrictions for a 30-year period.
- I. The original sale/rental price of BMR dwelling units shall comply with sales prices established by the City, which is revised annually. (SMC 19.66.040 (c))
- J. Below Market Rate dwelling units shall be offered for sale/rent only to persons qualified under the terms described in SMC 19.66.040 and 19.66.050 and described more fully in the Administrative Guidelines. (BMR Rental Units / BMR Ownership Program)
- K. Resale of BMR dwelling units shall comply with procedures set forth in SMC 19.66.060.
- L. In the event of any material breach of the Below Market Rate Program requirements and conditions, the City may institute appropriate legal actions or proceedings necessary to ensure compliance. (SMC 19.66.140)
- M. In the event that any of the Below Market Rate dwelling units or a portion thereof is destroyed by fire or other cause, all insurance proceeds therefrom shall be used to rebuild such units. Grantee hereby covenants to cause the City of Sunnyvale to be named additional insured party to all fire and casualty insurance policies pertaining to said assisted units. (BMR Administrative Guidelines)
- N. Pay an in-lieu BMR fee of an amount determined by SMC 19.66.090 (developments consisting of 9-19 units only).

**3. CC&R's (CONDITIONS, COVENANTS AND RESTRICTIONS)**

- A. Any proposed deeds, covenants, restrictions and by-laws relating to the subdivision are subject to review and approval by the Director of Community Development and the City Attorney.
- B. The Developer/Owner shall create a Homeowner's Association that comports with the state law requirements for Common Interest Developments. Covenants, conditions and restrictions (CC&Rs)

relating to the development are subject to approval by the City Attorney and Director of Community Development prior to approval of the Final Map. In addition to requirements as may be specified elsewhere, the CC&R's shall include the following provisions:

- C. Membership in and support of an association controlling and maintaining all common facilities shall be mandatory for all property owners within the development.
- D. The homeowners association shall obtain approval from the Director of Community Development prior to any modification of the CC&R's pertaining to or specifying the City.
- E. The developer shall maintain all utilities and landscaping for a period of three years following installation of such improvements or until the improvements are transferred to a homeowners association, following sale of at least 75% of the units, whichever comes first.
- F. The Conditions of Approval of this Special Development Permit shall be reproduced in the CC&Rs.
- G. The CC&Rs shall contain the following language:
  - 1. The carports shall be maintained at all times so as to allow for parking only (no storage allowed).
  - 2. No hanging lockers shall be allowed in carports.
  - 3. "Right to Remedy Failure to Maintain Common Area. In the event that there is a failure to maintain the Common Area so that owners, lessees, and their guests suffer, or will suffer, substantial diminution in the enjoyment, use, or property value of their Project, thereby impairing the health, safety and welfare of the residents in the Project, the City, by and through its duly authorized officers and employees, will have the right to enter upon the subject Property, and to commence and complete such work as is necessary to maintain said Common Area. The City will enter and repair only if, after giving the Association and Owners written notice of the failure to maintain the Common Area, they do not commence correction of such conditions in no more than thirty (30) days from the giving of the notice and proceed diligently to completion. All expenses incurred by the City shall be paid within thirty (30) days of written demand. Upon a failure to pay within said thirty (30) days, the City will have the right to impose a lien for the proportionate share of such costs against each Lot in the Project.
  - 4. It is understood that by the provisions hereof, the City is not required to take any affirmative action, and any action undertaken by the City will be that which, in its sole discretion, it deems reasonable to protect the public health, safety and

general welfare, and to enforce it and the regulations and ordinances and other laws.

5. It is understood that action or inaction by the City, under the provisions hereof, will not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations and ordinances of the City, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.
6. It is further understood that the remedies available to the City by the provision of this section or by reason of any other provisions of law will be cumulative and not exclusive of the maintenance of any other remedy. In this connection, it is understood and agreed that the failure to maintain the Common Area will be deemed to be a public nuisance and the City will have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by appropriate provisions of the Sunnyvale Municipal Code or any other applicable law.
7. No Waiver. No failure of the City of Sunnyvale to enforce any of the covenants or restrictions contained herein will in any event render them ineffective.
8. Third-Party Beneficiary. The rights of the City of Sunnyvale pursuant to this Article will be the rights of an intended third party beneficiary of a contract, as provided in Section 1559 of the California Civil Code, except that there will be no right of Declarant, the Association, or any Owner(s) to rescind the contract involved so as to defeat such rights of the City of Sunnyvale.
9. Hold Harmless. Declarant, Owners, and each successor in interest of Declarant and said Owners, hereby agree to save, defend and hold the City of Sunnyvale harmless from any and all liability for inverse condemnation which may result from, or be based upon, City's approval of the Development of the subject Property."

**4. DESIGN/EXTERIOR COLORS AND MATERIALS**

- A. The final design and colors of the masonry wall surrounding the property shall be approved by the Director of Community Development prior to issuance of the building permit. The wall heights and locations shall be per the above described report.
- B. The exterior elevations shall be modified to add more variation to the exterior details without creating an overly complex or scattered

appearance, and shall also be modified to show variety of colors to assist in visually differentiating the units.

C. Foam trim shall not be used.

**5. EXTERIOR EQUIPMENT**

A. Individual air conditioning units shall be screened with architecture or landscaping features.

**6. FENCES**

A. Design and location of any proposed fencing and/or walls are subject to the review and approval by the Director of Community Development.

**7. LANDSCAPING**

A. Landscape and irrigation plans shall be submitted to the Director of Community Development subject to approval by the Director of Community Development prior to issuance of a Building Permit. Landscaping and irrigation shall be installed prior to occupancy.

B. The final design, color, and placement of all hardscape shall be approval by the Director of Community Development and shall be in substantial conformance with the approved plans.

C. Soil mitigation measures shall be added in locations where new trees are planted adjacent to new paving areas, so that future tree roots to do not cause damage to the surrounding hardscape. The Director of Community Development shall have final approval prior to issuance of the building permits.

D. At the expense of the subdivider, City forces shall install such street trees as may be required by the Public Works Department.

**8. LIGHTING**

A. Prior to issuance of a Building Permit submit an exterior lighting plan, including fixture and pole designs, for approval by the Director of Community Development. Driveway and parking area lights shall include the following:

1. Sodium vapor (of illumination with an equivalent energy savings).

2. Pole heights to be uniform and compatible with the areas, including the adjacent residential areas. Light standards shall not exceed 8 feet in height.

3. Provide photocells for on/off control of all security and area lights.

4. All exterior security lights shall be equipped with vandal resistant covers.

5. Wall packs shall not extend above the roof of the building.

6. Lights shall have shields to prevent glare onto adjacent residential properties.
7. Prior to issuance of a Building Permit submit a contour photometric plan for approval by the Director of Community Development. The plan shall meet the specifications noted in the Standard Development Requirements.
8. Pole heights not to exceed 8 feet.
9. Installation of lights at a minimum of 50 feet intervals along all private streets.

**9. ON-SITE AMENITIES**

- A. The children's play area shall incorporate typical, active play structure, playground features for children.

**10. PARKING**

- A. Carport spaces shall be maintained at all times so as to allow for parking of vehicles.
- B. All covered spaces shall be assigned spaces.
- C. Specify compact parking spaces on Building Permit plans. All such areas shall be clearly marked prior to occupancy, as approved by the Director of Community Development.
- D. Unenclosed storage of any vehicle intended for recreation purposes, including land conveyances, vessels and aircraft, but excluding attached camper bodies and motor homes not exceeding 18 feet in length, shall be prohibited on the premises.
- E. No hanging lockers shall be allowed in carports.

**11. RECYCLING AND SOLID WASTE**

- A. Submit a detailed recycling and solid waste disposal plan to the Director of Community Development for approval.
- B. The required solid waste and recycling enclosure shall match the design, materials and color of the main building.

**12. UNDERGROUND UTILITIES**

- A. All proposed and existing utilities on site shall be undergrounded.
- B. Applicant shall provide a copy of an agreement with affected utility companies for undergrounding of existing overhead utilities which are on-site or within adjoining rights-of-way prior to issuance of a Building Permit or a deposit in an amount sufficient to cover the cost of undergrounding shall be made with the City.

**13. TENTATIVE MAP CONDITIONS**

- A. The Tentative Map is subject to the applicable Conditions of Approval in the Subdivision Map Act (§66427.1). The applicant shall provide written evidence that these requirements have been met.

- B. The Subdivision Map Act Conditions of Approval shall be reproduced on the Final Tentative Map.
- C. The two common area parcels shall not be sold separately, unless approved by the Director of Community Development.
- D. The Tentative Map shall only be valid in conjunction with the approved Special Development Permit.
- E. The center drive aisle shall be made to be at least 18 feet 6 inches clear.
- F. The landscape islands in the center drive aisle shall be removed.
- G. A Final Tenant Relocation Plan is required prior to issuance of the Tentative Map.